

In The United States District
Court For The Western District
of Oklahoma

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FILED

JUN 27 2022

CARMELITA REEDER SHINN, CLERK
U.S. DIST. COURT, WESTERN DIST. OKLA.
BY , DEPUTY

William L. Harding
plaintiff

v

Case ~~21-842~~ 21-CV-516-JD

Oklahoma Department of
Corrections, et al

Response to Defendant Motion to
Dismiss and for Summary Judgment
and Brief in Support. (Number (2) Two)

Petitioner William L. Harding
comes before this court in above
said case fully objecting the de-
fendants motion to dismiss and sum-
mary judgment.

The petitioner ask this court
to apply the response filed in
CASE # 21-CV-842JD that was consoli-
dated with 21-CV-516-JD, with the
following case law support. Also

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to apply all aspects as to Anthony
Wiecek.

(1) Exhaustion of Administrative Remedies

Jones v. Bock, 549 U.S. 1999 (2007)
eliminates the burden of proof on
a prisoner to plead and prove exhaustion
of administrative remedies under the
Prison Litigation Reform Act

Haywood v. Drown (2009)
Struck down a New York State —
legislative attempt to the jurisdiction
from New York to hear claims base
on 42 USC 1983. The attempt to shield
correctional officers from personal
liability violated the Supremacy clause

Hudson v. Denney, 538 F. Supp 2d 400
(Mass 2008).

Prisons and its employees must follow
its own rules

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Zarco v. McQueen, 185 Fed Appx. 638 (9th Cir 2008)
Failed to respond to grievance: deemed
admin. remedy exhausted

Baylis v. Taylor, 475 F. Supp 2d 484
(D.C. Del 2007)
grievance returned unresolved: deem-
ed admin. remedy exhausted

Whittington v. Ortiz, 472 F.3d 804
(10th Cir 2007)
waited 196 day for response: deemed
admin. remedy exhausted

Garcia ~~Comach~~ v. Maldonado, 243 Fed Appx-
880 (5th Cir 2007) give prison officials
the requisite for opportunity to re-
solve or address a problem that
later formed the basis for case... i.e
file civil rights complaint with the
State attorney general's office that
in turn informed the department of
correction with chance to resolve
issues

2.

Failure To State a Claim

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As stated & proved by Federal documents. The plaintiff was issued a W 1099 tax form from Joseph Harp Furniture Factory per Oklahoma Department of corrections. please note W 1099 within the record.

The defendants nor their attorneys has objected nor disputed this fact, therefore it must be taken as true. This being so the plaintiff holds liberty in his claims of civil rights violations. SEE.

Bell v. Wolfish, 441 US 520, 60 LEd2d 447, 99 Sct 1800 (1979)

A prisoner is not stripped of constitutional rights (protection) at the — prison gate, but, rather he retains all the rights of an ordinary citizen except those expressly, or by necessary implication taken from him by law

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Discrimination

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First and foremost this court has already filed these case under 42 USC 1983 which the defendants are all well aware of. The plaintiff in his last response set forth facts and acts of racial discrimination against himself. The defendants are also aware that the complaint was filed against them in their official and individual capacities. SEE.

Holler v. Mingo, 502 US 21, 116 LEd2d 301, 112 S.Ct 358 (1991)

State officials held subject to personal liability for damages under 42 USC 1983 based on official acts, where § 1983 actions were brought against officials in their individual capacities

Santos v Frederick County Bd. of Com'rs., 725 F.3d 451 (4th Cir 2013)

(1) plaintiff may bring a § 1983 action — against governmental officials in their official or representative capacity

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2) Unlike with governmental officials sued in their individual capacity, qualified immunity from suit under § 1983 does not extend to municipal defendants or governmental employees sued in their official capacity

Tatum v. Moody, 768 F3d 866 (9th Cir 2014)
Under § 1983 a person is responsible for the natural consequences of his actions

Browder v. City of Albuquerque
787 F3d 1074 (10th Cir 2015)

Section § 1983 permits citizens to sue for any assault on their constitutional rights that occurs under color of state law

Please note that not one of the defendants are officials according to law. None of them were voted in by the people of Oklahoma nor appointed by the

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Governor or Mayor of Oklahoma,
They are mere employees of
the Oklahoma state government,
not officials as to law.

Further more O.D.D.C. and
Joseph Harp Furniture Factory are not
individuals but entities and are subject
to suit. See: Hidden Village, LLC v -
City of Lakewood, OHIO, 734 F3d 519 (6th 2013)
City was not eligible for qualified im-
munity from civil ~~suit~~ rights suit
because it was not an individual

3. Constitution Violations

Plaintiff was laid in and ultiment
ly discharged from the Furniture Factory
(for filing grievance & civil rights com-
plaint) by Anthony Weichech and Alex
Lynn. See: Stakes Attachment "16" dated
9-24-2021 by Landon Langston, which clearly
states retaliation from Alex Lynn & Anthony
Weichech.

See, Spencer v. Jackson County Mo.

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728 F3d 907 (8th Cir 2013)

The right to file a legal action is protected under the First Amendment.

Pell v. Procunier, 417 US 817, 41 LEd2d 495, S Ct 2800 (1974)

Prisoner retains First Amend. rights that are not inconsistent with incarceration.

Murrell v. School Dist. No. 1, Denver, Colo., 186 F.3d 1238 (10th Cir 1999)

Denials of equal protection by municipal entity or any other person acting under color of state law are actionable under § 1983

Rouse v. Benson, 193 F3d 936 (8th Cir 1999)

The equal protection clause extends to prison inmates.

Eckert v. Town of Silverthorne, 258 F3d 1147 (10th Cir 2001)

To comport with equal protection clause, the law cannot be administered such

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as to have an evil eye and an uneven hand.

Jacobs, *Visions*? Jacobs Co. v. City of Lawrence, KS. 927 F2d 1111 (10th Cir 1991)

(1) The equal protection clause essentially requires that all persons similarly situated be treated alike.

(2) Equal protection violations occurs when government treats someone differently than another who is similarly situated.

US v. Mason, 774 F3d 824 (4th Cir 2015)

The equal protection clause prohibits selective enforcement of the law (or rules of penal institution) based on consideration such as race, (color or creed).

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Immunity

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Procunier v. Navarette, 434 US 555, 55 L^{Ed}2d 24, 98 S^{ct} 855 (1978)

Prison officials not immune from liabilities from official acts when motivated by malicious intent to deprive prisoner of constitutional rights.

Smith v. Wade, 461 US 30, 75 L^{Ed}2d 632, 103 S^{ct} 1625 (1983)

Prison officials could be personally liable in civil rights action for actions taken in course of his office
 "Smith grants punitive damages"

Scheuer v. Rhodes, 94 S^{ct} 1683, 1686-87 (1974)

11th Amendment does not immunize state officials for actions taken in their individual capacities

Alden v. Maine, 119 S^{ct} 2240 (1999)
 A State's sovereign immunity does not bar all suits against state officers

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Morton v. Kirkwood, 707 F3d 1276 (11th Cir 2013)

Qualified immunity does not apply where the facts show that the official violated the plaintiffs constitutional (civil) rights and where the law clearly established those rights at the time of the alleged misconduct.

Harris v. Serpas, 745 F3d 767 (5th Cir 2014)

Qualified immunity protect officers from suit... unless their conduct violates a clearly established constitutional (civil) right.

Bornis v. US, 759 F3d 793 (7th Cir 2014)
No State has sovereign immunity vis-a-vis the national government

as to all other claims please refer to the plaintiffs response to the first of Defendants Motion to dismiss and Summary Judgment

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In closing the following is case law for Summary Judgment

Cooper v. Dale 84 S Ct 1733 (1964)
Court must accept allegations in pleadings as true

Adickes v. Kress³ Co. 90 S Ct 1598 (1970)
On motion for summary judgment, court is required to resolve all ambiguities and draw all factual inferences in favor of party against whom summary judgment is sought.

Crawford v. Britton, 118 S Ct 1584 (1998)

Long-term prison inmate, who — sought damages from corrections officer (employee) based on constitutional claim that required proof of improper motive, was not required to adduce clear and convincing evidence of improper motive in order to defeat officer's motion for summary judgment.

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Haines v. Kerner, 92 Sct. 594 (1972)
Complaint should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

McClune v. Bell, 681 F3d 718 (6th Cir 2012)
A motion to dismiss for failure to state a claim is disfavored, especially when one's civil rights are at stake

Aptex Inc. v. Acorda Therapeutics, Inc., 823 F3d 51 (2nd Cir 2016)

On a motion to dismiss for failure to state a claim, all factual allegations in the complaint are accepted as true and all inferences are drawn in the plaintiff's favor.

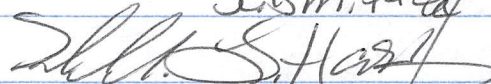
Nordine v. Shiley Inc. 240 F3d 1149 (9th Cir 2001)
Summary judgment is not proper if material factual issues exist for trial

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The petitioner prays that with the case law in the response combined with the first response and Brief in Support will show & prove, that by law and facts that his constitution and civil rights were violated by all defendants within his civil rights complaint.

Respectfully

Submitted



William L. Harding

dated June 13th 2022